IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4453 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USMANBHAI MURADBHAI

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4453 of 1986
   NOTICE SERVED for Petitioner No. 1
   NOTICE UNSERVED for Petitioner No. 2-4,6
   NOTICE NOT RECD BACK for Petitioner No. 5,7
   MR MANISH DAGLI, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/04/2002

ORAL JUDGEMENT

When the petition was filed on 6.8.1985 and when it was heard for admission on 24.2.1987, the petitioners were represented by their learned advocate Mr BS Kansara. On 24.2.1987, this Court passed the following order :-

"Rule returnable on July 13, 1987."

Thereafter unfortunately Mr Kansara expired. The office note shows that on 10.4.1992, notice was sent to the petitioners regarding death of their advocate. The matter has been listed for final hearing thereafter. Petitioner No. 1-Usmanbhai Muradbhai was served with the above notice. The office endorsement indicates that petitioner Nos. 2, 4 and 6 are unserved and that the notice has not been received back as regards petitioner Nos. 5 and 7. Petitioner Nos. 2 to 4 are shown as unserved on the ground that they vacated the premises which were indicated as their address in the cause title of the petition. Petitioner No. 6 is shown as unserved on account of incomplete address. Obviously, therefore, when the petitioners themselves had given incomplete address of petitioner No. 6 and petitioner Nos. 2 to 4 have themselves left the premises where they were residing at the time of filing of the petition, the Registry cannot be expected to find out the new address of those petitioners because even petitioner No. 1, who has been served, has chosen not to appear.

In view of the aforesaid circumstances, the Court has proceeded to take up the petition for final hearing because it is pending since 1986 and the Court cannot be expected to wait indefinitely. If petitioner Nos. 2 to 7 were interested in prosecuting this petition, they would have atleast made enquiries either with the office of the learned advocate who expired about more than 10 years ago or on not getting any response, they would have certainly made enquiries with the Registry here and made arrangements by engaging another advocate. The Court, therefore, proceeds with the final hearing of the matter without waiting any longer.

2. Heard Mr Manish Dagli, learned AGP for the respondent-State of Gujarat.

3. This petition under Articles 226 and 227 of the Constitution challenges the judgment and order dated 29.10.1984 (Annexure "F") passed by the Secretary (Appeals), Revenue Department to the Government of Gujarat by which the Secretary (Appeals) set aside the order dated 4.11.1982 which was passed by the Taluka Development Officer, Mangrol for granting N.A. permission in respect of the land bearing Block No. 84 admeasuring 22,477 sq.mtrs. in village Mota Borasara, Taluka Mangrol of Surat District.

4. Petitioner No. 1 was the owner of the aforesaid land. Petitioner No. 1 applied for N.A. permission for the aforesaid land. The Taluka Development Officer, Mangrol granted such permission by order dated 4.11.1982 (Annexure "A") subject to certain conditions. The Taluka Development Officer fixed the premium at Rs.24,348/which was required to be paid within 21 days. In fact, condition No.3A required payment of premium immediately. It also appears that after getting this permission, petition No. 1 sold the land in question to petitioner Nos. 2 to 7. Annexure "C" is a copy of the sale deed purporting to transfer the rights from petitioner No. 1 to petitioner Nos. 2 to 7. The State Government through the Secretary (Appeals) issued show cause notice dated Nil-5-1984 calling upon petitioner No. 1 to show cause why the N.A. permission granted by the Taluka Development Officer on 4.11.1982 should not be cancelled. Various reasons were indicated in the show cause notice including the ground that as per the Government Resolution dated 16.10.1982 the powers for fixing premium for granting N.A. permission were vested in the Collector/Deputy Collector and the powers earlier conferred on the Taluka Development Officer by Government Resolution dated 20.5.1980 were withdrawn. The show cause notice, therefore, stated that since the premium was fixed by the Taluka Development Officer without any authority, the N.A. permission was a nullity. Various other objections were also mentioned in the show cause notice.

Petitioner No. 1 filed his reply dated 21.6.1984 contending that since the petitioner had applied for N.A. permission before 16.10.1982, the Taluka Development Officer did have the power to fix the premium and that the Resolution dated 16.10.1982 would apply only to the applications made thereafter. Other objections raised in the show cause notice were also sought to be dealt with by submitting that opinion of the other departments was not necessary and in any view of the matter, there was no adverse opinion and, therefore, the order granting N.A. permission was not required to be disturbed.

5. After considering the material on record including the aforesaid reply of petitioner No. 1, the Secretary (Appeals) held that the Government Resolution dated 16.10.1982 taking away the powers of fixing the premium from the Taluka Development Officer and conferring the same on the Collector/Deputy Collector was applicable to all matters where N.A. permission were pending till 15.10.1982 and that, therefore, the petitioner's pending application was also governed by the

said resolution and the Taluka Development Officer had no jurisdiction or authority to fix the premium. Hence, the N.A. permission order was illegal. The Secretary also observed that the petitioner's contention that the N.A. permission order was cancelled after unreasonable delay was not acceptable when the officer had no jurisdiction; in the facts of the case, the delay was not unreasonable. The Secretary also noted that if the concerned officer had sought for the opinion of the other departments which were required to be consulted and if there was no adverse opinion, mere absence of opinion from those departments may not vitiate the proceedings, but if the concerned officer did not even seek the opinion of the affected departments, that would certainly affect the N.A. permission order.

6. In the facts and circumstances of the case, and in view of the fact that the Taluka Development Officer lacked the basic jurisdiction to fix the premium, the Court finds no infirmity in the order of the Secretary (Appeals). Even the contention regarding initiation of proceedings after unreasonable delay cannot be accepted because the N.A. permission was granted on 4.11.1982 and petitioner No. 1 himself had not placed any material to show that he had complied with the condition of payment of premium within 21 days which fact has been noted by the Secretary (Appeals).

7. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

(M.S. Shah, J.)
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